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Breaking the Law Principle of Civil Justice Procedure

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ABSTRACT

Legal principle in civil law procedure is general. It means can be applied in various situations, not only applicable or intended for specific events. Some legal principles in civil law procedure require attention. They are: principle of *point d'interet point d'action*; justice principle is done with a simple, fast, and low cost; active judges principle; passive judges principle; judges panel principle; open hearing to public principle; equality principle; justice principle for sake of justice based on God Almighty; principle of court decisions is accompanied by reasons.

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INTRODUCTION

Settlement of civil disputes has its own characteristics namely outside the court and through the courts or litigation. Litigants or involved in a civil dispute principally entitled to fully resolve the dispute without interference or intervention from any party. The thing to remember that civil law procedure is not allowed to solve the interests through violence or arbitrary to others or attempt to judge their own (*eigenrichting*).

Judging self action is not warranted in law and breaks the law. The law has provided a means to regulate the procedures to enforce the interests. Exceptions are permission to allow someone to cut off the branches that pass above his neighbor's yard (Article 666 KUHPerdata).

Law enforcement for civil material must go through a process based on legal principle of formal civil law or civil law. In civil law discovered principles of justice that must be understood and applied both formally and substantively in order to reach the verdict to reflect the rule of law, justice and expediency.

Field data shows that petition claims/civil lawsuit filed in District Court are so high. Such conditions would require infrastructure to handle and settling disputes more professionally, hence the presence of civil procedure principles essentially become a guideline for judges in check, hear and decide the case (Wantu, 2011: 476-477). In keeping with spirit of Act No. 4 of 2004 which later was amended by Law No. 48 of 2009 on Judicial power, it gives freedom to judges to perform the duties and role as enforcer of justice, then efforts to supplement and improve civil law procedure principles in civil justice will needs special and deeper attention.

Basically the Indonesian government attempted to hold the idea of civil law renewal, including principles of law in civil law. The consequence is some Bill of civil law procedure has been successfully formulated by Drafting Team. However, formulation to create bill is still not realized in form of law that has entered and has a number in State Gazette.

Such conditions expects the Indonesian government to have the political will to take immediate concrete steps to immediately expedite the enactment of new Civil Procedure Code that can augment and replace the rules that have been long, for example HIR and Rbg. Basically the concept of HIR and Rbg hitherto is used as a reference in civil law procedure as a relic of Dutch East Indies Government, and philosophically not based on spirit and way of life of Indonesian nation.

The provisions in Rbg and HIR cannot compensate for rapid development in world of law. An example is the HIR and Rbg do not regulate the new legal institutions such as the rampant practice of civil courts by using the class action (representative group) and use of new evidence in electronic systems, such as digital signature (Wantu, 2011: 476-477).

Renewal of civil law is an attempt to change the order of civil procedure which is far behind the development, and inconsistent with aspirations and needs of community. Reform efforts and presence of new civil procedure code is expected to help the

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ideals of rule of law that emphasizes the rule of law, justice and expediency.

In connection with renewal, most legal experts advise that civil procedure law reform should includes philosophically, juridical (normative) and sociological (Sutiyoso, 2002: 5).

Authors agree to the opinions mentioned above. It brings consequences on application of principles of civil law itself. Philosophical updates are intended to review the relevance of basic concepts and civil procedure principles. Juridical updates are intended to evaluate the charge of norms or rules of positive law in force today. Sociological updates are intended that a new legislation is not being challenged by public.

The facts show that some civil procedure principles are considered not able to answer the needs of today's civil justice practices. The example is principle of civil law that requires judicial carried out by an examination of judges panel. This time according to circumstances the number of judges in courts, especially courts are still a class B implementation the judges cannot be met if at same time the court examine the 3 (three) or four (4) cases. While the number of judges in court only 7 (seven) to 8 (eight) including the Chairman and Deputy Chairman.

Above description is only one principle of civil procedural law issues that immediately got the solution. Such conditions would hinder the court to meet the demands of society that case filed completed on time and not delayed proceedings simply because the number of judges is not met. The thing to remember is civil law procedure requires the completion of a case filed by community can be resolved as soon as possible based on justice principle with fast, simple and low cost.

Based on above description and background, author formulates the problem as whether principles of civil law can be breached by reason of conditional facilities and infrastructure in order to meet the appropriate verdict of justice, legal certainty and expediency. It is because civil law can adapt to wishes of changes in legislation and times itself. Basically principle of civil procedure law is general. It means can be applied in various situations, not only applicable or intended for specific events.

B. Methods:

This is a normative law research with descriptive nature because it is intended to provide a detailed description of focus studied by utilizing the legal norms to answer the problems study. Consistent with study object of legal norms, this research is based on availability of secondary law. Mertokusumo (2007:P 30) states in an effort to refine the data (legal material) obtained from library research, the field research can be done.

Legal materials constitute official documents in form of all the publicity about the law. Publication of law includes legislation, government regulations, textbooks, dictionaries law, legal journals, and comments on court decision (Marzuki, 2006: 141). Legal materials were divided into three (3) groups. First are primary legal materials. Second is secondary law. Third are tertiary legal materials. Sunaryati Hartono stated that primary legal materials is subdivided into mandatory sources, namely the national legislation issued by authorities of jurisdiction itself, and persuasive primary sources, namely the legislation of different provinces (but concerning the same thing) or verdict courts of different jurisdictions (Hartono, 2007). Secondary law from library materials contains information about the primary legal materials. Furthermore, tertiary legal materials of library materials contain legal materials that provide guidance to primary legal materials and secondary law.

Documents study is used to collect the secondary law. The analytical method used is qualitative analysis. Qualitative analysis method is a research procedure to produces descriptive data. It is based on opinion of Sumardjono (Suwardjono, 2001: 10) who stated that a normative legal research using secondary data, research in general is descriptive and analysis is qualitative.

C. Discussion:

This discussion emphasizes the first point of philosophical renewal of civil procedure principles. In essence, a legislation that created and declared valid ideally should match with view of life in society itself. Thus the consequences of civil procedure require any principle of law consistent with view of life in community.

Research results show several civil procedure principles that need attention, so that its implementation does not give rise to multiple interpretations among legal experts and those who study law. Some principle of law in civil procedure law is below.

1. Point d'interet point d'action Principle:

Basically anyone can file a lawsuit to court. Point d'interet point d'action principle means that everyone who has an interest may file a claim or lawsuit. Interest here is based on existence of legal relationship between the plaintiff and defendant, and legal relationships that directly experienced them in concrete by plaintiff.

This principle has a relationship with another important principle in civil law procedure as *actori incumbit probatio* principle which means whoever has something right or express an event must prove the existence of right or the incident (Article 164 HIR). The plaintiff must prove a link between himself and the rights or interests.

Someone who does not suffer a loss certainly has no interest. To prevent any citizen does not just make demands rights and would make it difficult for

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court, only the interests of adequate and decent and legal basis alone that can be accepted as a right demands.

Court cannot examine a civil case without any demands or claims rights. Similarly, if the case were brought to trial, judge may not refuse to examine, hear the case even if there is no or unclear laws that govern them. Judge is banned to refuse to investigate and adjudicate the case based on presumption that judges know the law.

Point d'interet point d'action principle is solely a right and not an obligation. Interested parties (the plaintiff) can file a lawsuit, if its interests are violated, and at any time can also suspend the civil case before the judge read out the verdict. Point d'interet point d'action principle is not currently outlined in legislation, and therefore in future this principle more appropriately accommodated or regulations in new civil procedure code. Act No. 48 of 2009 is regarded as the new regulations in judicial power but was not set out clearly on Point d'interet point d'action principle. Ideally, this principle should still be maintained as one of principles contained in civil law procedure, although the draft law the new civil procedure code does not go enacted.

2. Justice principle is done with a simple, fast, and low cost or speedy administration of justice (Article 2 UU 48 year 2009):

This principle is still not implemented in practice or not implemented fully. This principle contains symptoms dilemma always faced with other systems, such as the existence of various legal remedies (appeal and cassation) that so long, and stages of proceedings were too rigid and formalistic.

Study results found that civil proceedings are so long. Such condition would contradict to Appellate Court (SEMA) No. 6 of 1992 on Settlement of Case in High Court and District Court to gave a grace period limit of 6 (six) months (SEMA No. 6 year 1992).

Consistent with applicable regulations, that cost case, especially in PN, PA, Administrative Court is determined from determination of Chief Justice. Courts in one jurisdiction in High Court have magnitude different (Tumpa, 2008: 10). Such circumstances would cause unfavorable impression. It needs to make guidelines to determine the case cost, including the case inspection costs of the object (local examination), confiscation cost, and execution costs for Indonesian court. To determine the case cost, it must be taken into account the distance, transportation tool used, and level of difficulty of terrain taken, lodging and security.

Rearrangement support of court fees management system and encourage the creation of atmosphere of transparency and accountability, especially financial matters makes Chairman of Supreme Court issued a SEMA No. 4 of 2008 on collection of court fees in June 2008 (Tumpa, 2008: 10). SEMA set a few important things, namely financial management order of the case is done with disclosure standards consistent with legal basis made by each President of Court; establishes the mechanism of case payment only through banks and prohibits cash payments through bailiffs; court must return to parties the remaining money, and remaining cases were not taken within six to be deposited into state treasury as unclaimed money; and orders to deposit interest income/gyro obtained from consignment to country.

Furthermore, Chairman of Supreme Court in December 2008 also issued SEMA No. 09 of 2008 on Acceptance and Usage Reporting on court fee waiver. Based on this SEMA, all courts are required to report to MA about financial management status of their cases periodically. General information from the report will be published periodically for purposes of transparency and accountability (SEMA No. 09 year 2008).

To avoid incidents that violate judicial principle of fast, simple and low cost, Civil Procedure Code Bill which will become law, it immediately deserves attention and made changes. Likewise, there should be simplification of process for disputes settlement. Affirmation of SEMA No. 6 in 1992 would need to be included in bill civil procedure law, to realize justice principle with a simple, fast, and low cost.

3. Active Judge Principle:

Active judges principle means that judges as officials and chairperson must actively lead the proceedings so it can run smoothly. The judge is required to set a schedule for day session and determine the calling and order that necessary evidence in trial must be prepared. Likewise, hearing witnesses and expert witness testimony are needed. Before the trial, the judge is authorized to give advice and attempt to reconcile the two sides, as well as demonstrate the efforts of law are the litigant's rights.

Peace effort can be done outside of court or in court proceedings. In peace efforts made in court, active role of judge is expected. To give a better chance to peace effort, then the judge can postpone the trial. If the two parties managed to make peace by specifying it through a Letter of Agreement under the hand written on paper stamped, then based on that the judge handed down its decision (*acte van vergelijke*) punish both parties to meet the contents of peace that has been made The.

The power of peace verdict is same as with regular decision and can be implemented as other decisions. Only in this case an appeal is not possible (Mertokusumo, 2006: 111). Related to peace effort, Supreme Court itself has issued SEMA No. 2 of 2003 on Mediation Procedure In court, repeal before SEMA No. 1 of 2002 on Empowerment of First Instance Institutions Implement Peace Ex Article 130 HIR/Article 154 RBg (SEMA No. 1 year 2008).

Main contents of SEMA No. 2 of 2003 on Mediation Procedure In court are all civil cases filed in high court must be resolved through peace with help of a mediator. In addition, judge shall postpone the case hearing process to allow the parties to take the process of mediation. Then the judge is obliged to provide explanations to both parties about the procedure and cost of mediation. Next, if mediation does not succeed to produce an agreement, judge continues to settle the disputes.

Cessation of civil cases in court can only be done if the plaintiff revokes the lawsuit. Revocation of lawsuit can be done before the lawsuit was examined at hearing or before or after the defendant gave the answer. If the revocation is done before the case examined in court or before the defendant gave the answer, then the defendant is officially not yet know of existence of lawsuit, which means that officially there has been no loss to its interests. In such conditions, it is not necessary to have the consent of defendant. Conversely, if the revocation occurred after the defendant gave his answer to plaintiff or, in other words the interest of defendant has been attacked or defendant also has issued a small cost on lawsuit plaintiffs, lawsuit for revocation should the need require approval from the defendant.

Lawsuit revocation action after the defendant gave an answer brings the consequence that plaintiff had waived his right, so there should not submit it again. In practice, plaintiff often revoke of a lawsuit by on grounds that plaintiffs' demands have been met by defendant.

For record lawsuit revoke by plaintiffs, that this action cannot stop or delay the criminal charges. Adversely, during the criminal prosecution, then the claim for damages in civil cases arising from criminal acts are halted or postponed.

It can be seen from criminal and civil cases of Prita Mulyasari allegation to have committed the crime of defamation Omni Hospital and sued civilly for such actions. In civil case ruling in Tangerang District Court No. 300/Pdt.G/2008 PN TNG, among others punish Prita Mulyasari to pay compensation of Rp 314.3 million and should make an apology in two national newspapers for a publication. Against the decision of Tangerang District Court, Prita Mulyasari attorney appealed to Banten High Court on 5 June 2009. Then the Banten High Court with a case 71/pdt/2009/PT BTN, decided to strengthen the Tangerang District Court decision that Prita Mulyasari pay loss of USD 204 million and is required to make an apology ad in a national newspaper for a publication (http://www.tempo.co/read/fokus/2009/12/03/967/Banding-Kasus-Perdata-Prita-Diputus-Sejak-September).

In Prita Mulyasari case, there are irregularities that a civil lawsuit had already been decided by PT. In fact, criminal case is still in demand, and it is the basis of civil defamation. Supposedly, a criminal case was decided first by court, then civil matter is continued as a legal basis to sue Prita Mulyasari (http://www.tempo.co/read/fokus/2009/12/03/967/Banding-Kasus-Perdata-Prita-Diputus-Sejak-September).

The case was preceded by a report to police report No.Pol: LP/2260/K/IX/2008/SPK Unit I dated 5 September 2008. Later on Monday, May 25, 2009, case file was transferred and registered at Criminal Registrar of Tangerang District Court in Case Register Number: 1269/Pid.B/2009/PN.TNG, then decided the judges who will examine and adjudicate the case of Prita Mulyani namely: Karel Tuppu, SH.MH as Chief Justice, Arthur Hangewa, SH and Prime Ginting, SH as the Judge, Sukiman, SH as Substitute Registrar.

Civil lawsuit of Omni International Hospital, Serpong, South Tangerang City against Prita Mulyasari eventually into public spotlight. Various criticisms raised by various parties to Tangerang District Court and Banten High Court Judge over the decision. Once it became public attention and received criticism of various parties, Omni International Hospital finally filed a revocation of a civil case No. 300/Pdt.G/2008/PN.Tgr. Jo. 71/pdt/2009/PT BTN dated 14 December 2009 on reconciliation grounds.

At end of December 2009 the judges decided that Prita Mulyasari was not proven guilty of criminal defamation against Omni International Hospital. Indeed when the criminal case addressed to Prita Mulyasari still underway, then attempts a civil suit filed by Omni International Hospital still not be decided, waiting for results of initial conviction.

Active judges principle meant that as people who are considered wise and know the law as well as a place to ask anything, the judge give in giving consideration to have authority and to be wise and active in solving problems arising in dispute. Principle of active judges as stipulated in HIR and Rbg is consistent with traditional Indonesian thoughts flow. As consequences, judge as the party deemed to know the law of *ius curia Novit*, it is not permitted to reject every case submitted to court.

The judge in examining and deciding cases that do not meet the rules of written law, judge is obliged to explore and understand legal values and sense of justice in society (Article 5 verse (1) UU No. 48 year 2009). Exploring and understanding the legal values that exist in community that is intended here as law material (law governing the substantial rights and obligations), not a formal law (law governing the formal rights and obligations). In exploring and discovering the laws, not just make a "breakthrough", but there are methods or rules of game. Legal discovery is often said as "breakthrough", cannot be done carelessly, but there are methods or rules of game. Liabilities remained consistent and constantly obey the system.

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4. Passive Judge Principle (Tut Wuri):

Passive judge principle is intended that scope of dispute is determined by litigants. Judge may not add up and reduce the scope of dispute. The position of judge only helps to seek justice and strive to overcome all obstacles and barriers to achievement justice.

Passive judge principle is always associated with idea that justice is achieved in every civil case merely from formal justice, so that settlement of civil disputes entirely left to litigants. Principle of passive judge in a civil case must be understood that it is only limited to determination of extent of dispute and right to terminate the case by parties before the verdict handed down.

Issues that arise in relation to passive judge principle are the absence of clear legislation on this principle. Indeed, Article 4 (2) of Law No. 48 of 2009 regulates the court business in search of justice to help overcome the barriers and obstacles, but the article did not mention passive judge principle. Likewise, previous old Law on Judicial power namely Law No. 14 of 1970 jo Law No. 39 of 1999 jo Law No. 4 of 2004, does not mention clearly about Passive judge principle.

To cope and maintain Passive judge principle in practice of civil procedure principles, presumably this is considered by government and legislature while preparing a draft law to regulate the civil law of this principle in legislation. With such actions, consistency of Passive judge principle in civil law procedure is maintained as an important principle in resolution of civil disputes.

5. Principle of composition of Assembly at least three (3) People judge (Article verse (1) UU No. 48 year 2009):

This principle aims is to keep the trial objectivity. Study results by cooperation of several universities in Yogyakarta the Central Anti-Corruption (Pukat) Law Faculty, University of Gadjah Mada (UGM), Faculty of Law, University of Atma Jaya Yogyakarta (UAJY) and Faculty of Law, University of Muhammadiyah Yogyakarta (UMY), held a Real Work Lecture of organized Learning for Community Empowerment (PPM) with theme of "Community Empowerment of Court Users " in July-August 2008. This activity involves students and intended to monitor the courts in 15 districts/cities in Special Region of Yogyakarta (DIY) and Central Java. The findings obtained in these activities show the practice of violations that occur in any court as a court nonetheless held although the judge assemblies did not complete (Halili *et al*., 2009: 7-10).

Generally, judges who decide cases by judges who do not complete the offense tried to dismiss the allegation, with arguments that problem lies in number of judges is inversely proportional to number of cases that go to trial. The number of judges who served on court is not consistent with number of cases heard in court. Logically one judge handle more cases that have no sense anymore, based on space and time available.

This study results found that there are some courts still lack the judge. These can be seen in some courts, such as: the Yogyakarta District Court that only has 11 (eleven) judges, including the Chairman and Vice-Chairman, Manado District Court that only have nine (9) judges are already including the Chairman and Vice-Chairman, and Limboto District Court number of judges that eight (8) persons including the Chairman and Vice-Chairman, as well as the Tilamuta District Court which has eight (8) judges, including the Chairman and Deputy Chairman (Wantu, 2011: 412).

These conditions need attention, application of panel composition principle is a necessity, but on other hand number of judges in court no longer comparable with number of cases that go to trial. Therefore, government should think again condition by adding steps and raise new judges. Likewise, in conjunction with practice of application of assembly arrangement principle, it would be retained by reprimand and severe sanction for violating a court.

6. Open Hearing to Public Principle:

This principle become an oversight or social control over the course of justice, although not a direct control over the proceedings that will better ensure the objectivity of fair examination to fair decision to public. In addition, this principle to ensure the implementation of impartiality and fair judicial, as well as protecting human rights in court proceedings.

Research results at Tilamuta District Court and Limboto District Court show there are practices that are contrary to principle of trial openness to public. The reason given by respondents are not all judicial proceedings should be open to public, there are some things that must be declared closely to public. Basically the judge reason is wrong, when applied in examination process of decency judge actions, but the reality on proceedings in which the judge had declared the trial open to public and is not a matter of morality, but there are also restrictions on visitors by personnel officers, much less the case concerning a civil lawsuit involving government officials (Wantu, 2011)

Such conditions would decrease public confidence in courts. Therefore the demand on courts transparency is always present and appears everywhere. Transparency is an integral part of accountability. To achieve courts transparency, public needs more easily and freely access to court information, including access to court decisions.

The judicial process is expected more harmonious, or directed to that by upholding the rule of law. The judicial process should be open and opening up to change and accept criticism. Receptive attitude also affects the responsive judicial process.

Therefore, principle of public open hearing in future must remain consistent to be maintained and implemented. Draft Law on Civil Procedure (bill) that will be passed into law must still accommodate and regulate clearly and follow on this principle.

7. Equality Principle:

Everyone considered and treated equally before the law. Both sides in a civil case should be heard together in court (*audi et alteram partem*). Court judge in according to law without differing the persons (Article 4 Verse (1) UU No. 48 year 2009).

In judicial proceedings, both parties must be treated fairly and given equal opportunities to defend their respective interests. This principle calls for balance procession in examination. Judges are not allowed only hear the testimony of one parties, without giving other parties the opportunity to express their opinions. Respondent's opinion among judges show that most principle of *audi et alteram partem* is already implemented consistently with order of legislation. Generally, parties have equal opportunities in trial.

Adversely, opinion of advocate/lawyer shows that examination of cases is unequal treatment. The same was said by respondents stating justice seekers in certain cases it is often a different treatment. For example the evidence presented one party (plaintiff and defendant) is not recognized as relevant evidence by judges to examine the case.

Application of equality principle must be started from the beginning of proceedings until the birth of judge's ruling. The same treatment to claimant as the party initiating business, ideally should also be obtained by defendant to defend his rights. Any actions taken by judge in case investigation should be known by both parties.

Equality principle in court treatment is consistent with justice principle to give equal treatment to both parties either plaintiff or defendant in order to realize the verdict of justice sense more easily realized. Therefore, equality principle treatment in trial should remain and be maintained in legislation civil law procedure as discussed by government.

8. Principle of Judicial Forum: "By Justice Based on God" (Article 2 Verse (1) UU No. 48 year 2009):

Justice principle is done "By Justice Based on God Almighty". It means that judge's commitment to always do justice or fair at checking and verdict. Judge examines and deciding the case must understand the justice meaning, both procedural and substantive, so that judge's decision can be accountable both to himself, society and God Almighty.

Research results from the search for justice usually caused distrust of public when dealing with court with poor performance. It becomes a complex issue because the court itself has not been able to deliver services to meet the expectations and have not been able to provide justice for people (Interview with justice seeker, Indonesia 2009-2010).

Judge in applying justice based on God always strive to bring the dispute to solving problems on God as a control so that no derailment of justice and truth. The spirit to always be fair in examining the case eventually gave birth to a fair verdict anyway.

This principle should remain and maintained in judicial process forever, including civil justice process. This principle becomes the handle or main basis of judge in examining and deciding the case, therefore justice principle is done for sake of justice based on God should not be washed out along with efforts to change legislation. Draft on Civil Law Procedure that would become the Civil Procedure Code must still accommodate and regulate clearly this principle, so that justice itself is always present in a dispute resolution.

9. Principle of Judgments Accompanied With Reasons And Law Foundation (motievering plicht):

This principle gives the obligation for judge to make considerations in decision. In addition, court decision must contain has reasons and grounds of this decision, also includes specific articles of legislation in question or the source of unwritten law that formed the basis for judge (Article 50 Verse (1) UU No. 48 year 2009).

This principle purpose is that decision should be accompanied by reasons or considerations that sufficient and logical. Requirements for a reason or consideration as the foundation for decision are to meet the demands of fairness and objectivity. Events and legal considerations actually is an integral reason for judge to make verdict.

In practice of legal considerations foundation, verdict only states the words "pay attention to articles of legislation in question" without specifying how many chapters, and rule of law, and in where clause is applied if there is the material law or formal law. The consequences of these events, due to absence of sanctions that led to cancellation of decision of judge in the case. Every verdict should contain clauses of law or the unwritten law applied as a form of liability verdict.

Reason and judgment foundation are needed in order party as a seeker of justice can understand the judge's decision. It is needed in order higher judge (appeal and cassation) can examine and assess whether the application of law committed by trial judge is correct and appropriate.

Based on research results in each location (Wantu, 2011: 511), judge at both the District Court and High Court did not include clauses to refer or ground in deciding the case. Legal analysis of events that was seen as a legal fact cannot be found except at end of a sentence verdict which stated: "considering clauses HIR and Rbg concerned" or a sentence which states: "in view of all the laws and

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regulations in force". This can be seen in several court decisions as follows:

a. South Jakarta District Court Decision No. 138/Pdt.G/2002/PN.Jak.Sel Jo Jakarta High Court decision No. 135/Pdt/2003/PT.DKI. on lawsuit (news) in field of press, in which both the trial judge did not mention provisions which exist in Law No. 40 of 1999 on Press, as the basis of legal considerations (Wantu, 2011: 511).

b. Yogyakarta District Court Decision No. 11/Pdt.G/2005/PN.Yk jo Yogyakarta High Court decision No. 85/Pdt/2005/PTY, on unlawful acts of industrial termination. Yogyakarta District Court rejected the lawsuit on grounds that authority to hear this case. Similarly, Yogyakarta High court of first instance upheld the verdict. However, court did not mention two articles of legal considerations (Wantu, 2011: 510).

c. Manado District Court's Decision No. 203/Pdt.G/2008/PN. MDO on application for divorce due to domestic violence. In consideration of legal panel the judges who examined the case are not explains in detail on basis of legal considerations and not explains article the legislation referenced in judgment. In this case the judge only using words such as: "attention to articles of Law No. 4 of 2004 and Law No. 14 of 1985 as amended by Law No. 5 of 2004 and other legislation in question"

d. Limboto District Court Decision No 10/Pdt.G/2006/PN.LBT about the lawsuit as heirs of land rights. The judge who examines and adjudicates the case does not mention the article as basis in its legal considerations (Wantu, 2011: 511).

Ideally consideration of judge must have reasons and has a complete and fundamental objective value as a responsibility to God Almighty, litigants, society and state. Therefore, judge in examining and making legal considerations, must be carefully and thoroughly to assess and analyze the facts and legal right to apply article that is in legislation. Fore principle of decision accompanied by reasons and grounds, as well as the provisions of legislation must remain consistently implemented. Bill that will soon become law the Civil Procedure Code to be retained and set out clearly this principle.

In this discussion, not all the legal principle of civil procedure is outlined. The reason is because most who cause problems in application just described in this study, while principle of civil procedure of other less raises the pros and cons in practice.

Basically, principles in civil law procedure have mutual cohesion. A blend of a number of civil law principles would become a concern and its own record in an attempt to open up opportunities for emergence of constructive ideas for development of civil procedural law.

What is proposed by Muqaddas for integration of number principles that still need to be accompanied by a critical attitude of juridical academic to understand a number of rules of law and doctrines-doctrines of civil law, a right opinion. Authors agree and understand to the purpose of this opinion (Muqaddas, 2002: 29).

Law principle as the fundamental values that are intrinsic always be approached in order to obtain a sense of substantial actual and relational meaning that can be tracked from a text of law or doctrine relating to reality or problematic socio-cultural in certain situations. It is needed for an effort to discover the true meaning of various sides of a law or doctrine (Muqaddas, 2002: 29).

A word or phrase in legislation text is not left without meaning, resulting substantial errors, especially if it is done by judges widely. Benefits of this approach are to obtain substantial deepest meaning, and can obtain meaningful relevance to current situation when a law is applied in a new case.

Civil judicial process fundamentally is tied to principle of law as stipulated in legislation such as Law No. 48 of 2009 on Judicial Power. Indeed when examined in Civil Procedure Code Bill, majority of material is an amalgamation of some of laws and regulations of procedural law that existed before the HIR, Rbg, and Rv. Nevertheless, it is acknowledged that there are some things that progress or changes compared to existing procedural law regulations. Future civil law should be updated and refined by legal concepts that can meet the demands of times.

The opinions expressed by Nindyo Pramono on need for harmonization of various legislation would correct and very precise. The authors agree with this because reality shows that various regulations are made in order do not overlap each other, but rather contradictory (Pramono, 2010: 7).

The legislation that created ideally not to overlap and would lead to chaos. Presumably the role of legal principle is important to legislative process that occurs in this country. Legal principles such as *lex superiori derogat lex inferiori* or higher legislations paralyze lower legislation. Principle *of lex posteriori derogat legi priori* or new laws crippling the old legislation. Thus principle of *lex specialis derogat legi generalist* or special laws paralyzes or defeat general laws. By complying with legal principle, it is hopefully legal reform can be run successfully.

Basically principle of law that exist in civil judicial process complementary to one another. Civil law discovered principles of justice that must be understood and applied both formally and substantively in order to reach the verdict that reflects the rule of law, justice and expediency. The presence of legal principle in civil law procedure can adjust to desire to change the law and times itself. Basically principle of law in civil procedure law of a

general nature which means it can apply in various situations, not only applicable or intended for specific events.

D. Conclusion:

Research results show some several civil procedure principles that need attention in order the implementation does not create multiple interpretations among legal experts and those who study law. Some legal principle in civil law procedure are: Point d'interet point d'action principle; justice principle is done with a simple, fast, and low cost; active judges principle; passive judges principle; composition of panel judges principle; open hearing to public principle; equality principle; justice principle is done for sake justice based on God Almighty; and court decisions accompanied by reasons principle.

Based on this paper, author makes recommend as follows. First, a need for judge's openness at District Court, High Court and Supreme Court in judicial process to better reflects accountability and transparency in order increase society confidence. Second, a need to enhance and broader proportion of Judicial Commission's role in overseeing the basis of external judges who act outside the law stipulated. Third, a need for community participation in assessing the judges quality performance at both District Court, High Court and Supreme Court, and to report to Supreme Court and Judicial Commission that serves as the internal and external oversight, if finding judges who violate the code of ethics and legislation regulations.

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